

3 Orig: J. Gleason
/ XC: City Clerk

Contract No. 2003-0
5/6/03 #10

LOCAL AGENCY AGREEMENT

This Agreement is entered into as of May 6, 2003, the Effective Date of the Metropolitan Agreement by the Inland Empire Utilities Agency, a municipal water district duly organized and existing under the laws of the State of California ("IEUA"), and the City of Chino, a general law city duly organized and existing under the laws of the State of California ("Chino").

WITNESSETH

WHEREAS, in March 2000, California voters approved Proposition 13 ("Prop. 13") authorizing the State of California to sell \$1.97 billion in general obligation bonds for water related projects throughout the State. The Governor's Budget Act for 2000, Chapter 52, Statutes of 2000, appropriated to the California Department of Water Resources ("DWR") local assistance grants for groundwater storage and supply reliability projects in the amount of \$161,544,000 by budget item 3860-01-6027, payable from the Interim Reliable Water Supply and Water Quality Infrastructure and Managed Subaccount; and

WHEREAS, The Metropolitan Water District of Southern California ("Metropolitan") subsequently was selected by DWR as a grant recipient for \$45 million (the "Prop 13 Funds") to be used for groundwater storage projects within the service area of Metropolitan. In a letter dated October 13, 2000, DWR set forth the specified terms and conditions of this grant to Metropolitan; and

WHEREAS, on September 20, 2000, Metropolitan sent a letter to its 26-member public agencies requesting their presentation to Metropolitan of a list of groundwater storage projects to be considered for funding by Prop 13 Funds. On November 1, 2000, Metropolitan delivered to those member public agencies that indicated an interest in the Prop 13 groundwater storage programs, a Request for Proposals for Participation in Groundwater Storage Programs Using Proposition 13 Funds, RFP No. WRM-2 (the "RFP"); and

WHEREAS, Metropolitan anticipated that such Proposals would result in the storage of water that Metropolitan would import from the State Water Project and the Colorado River. This stored water then could be pumped by the member agency, or sub-agency, with a corresponding reduction in requirements for surface water deliveries from Metropolitan. As a result, Metropolitan would have a greater amount of water to distribute within its service area. In addition, such groundwater storage programs constitute a part of a larger effort of Metropolitan to meet water supply demands in Southern California, as set forth in the Integrated Water Resources Plan approved by Metropolitan's Board of Directors in 1996, and the Groundwater Storage Principles adopted in connection therewith by Metropolitan's Board of Directors in January 2000; and

WHEREAS, IEUA entered into a Groundwater Storage Project Funding Agreement (the "Metropolitan Agreement") with Metropolitan, and the Three Valleys Municipal Water District and Chino Basin Watermaster effective as of March 1, 2003, a copy of which is attached hereto as Exhibit C, pursuant to which funding will be provided from Prop 13 and other Metropolitan funds to finance the facilities listed on Exhibit A hereto as "Local Agency Facilities," which are deemed necessary to enhance a groundwater storage program in the Chino Basin; and

WHEREAS, IEUA desires to pass through to the Local Agency any funds received by IEUA under the Metropolitan Agreement which are allocable to the Local Agency Facilities for use by any Local Agency to construct such Local Agency Facilities; and

WHEREAS, such Local Agency Facilities intended for construction and use by Chino consist of the Benson and Palo Verde well, intended to be jointly financed, constructed and operated by Chino and the Monte Vista Water District ("MVWD") pursuant to the funding of such Local Agency Facilities under the Metropolitan Agreement; and

WHEREAS, the operation of such well requires a brine disposal facility to be operated by IEUA, which shall consist of either the reactivation of the existing West Edison Brine Line, or the construction of new line in Benson Avenue for brine discharge to the NRW System in Phillips Boulevard.

WHEREAS, in exchange for such funding, the parties to the Metropolitan Agreement intended that each Local Agency would assume all obligations of IEUA under the Metropolitan Agreement relating to such Local Agency Facilities intended for construction and operation by that Local Agency, whether imposed by Metropolitan, DWR or another entity, including but not limited to the obligations recited in Sections III, IV, V, VII, X, XI and XII of the Metropolitan Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Definitions. All capitalized terms used herein and not otherwise defined shall have the meanings give them in the Metropolitan Agreement.

Section 2. Effective Date; Termination Date. This Agreement shall become effective upon the Effective Date of the Metropolitan Agreement and shall terminate upon the termination of the Metropolitan Agreement. However, in the event that not all of the Local Agencies for which funding is provided for those Local Agency Facilities described in Exhibit A of the Metropolitan Agreement execute a Local Agency Agreement substantially similar to this Agreement, the Metropolitan Agreement is not intended to terminate, but remain in full force and effect, with any uncommitted funding reallocated to other participating Local Agencies for other Local Agency Facilities, whether or not described in Exhibit A to the Metropolitan Agreement, which serve the same Metropolitan storage objectives. In any event, the full amount of Prop 13 Funds and other Metropolitan Funds provided for such Local Agency Facilities under the Metropolitan Agreement shall be provided for other such Local Agency Facilities to be constructed and operated by participating Local Agencies.

Section 3. Funding of Local Agency Facilities. All amounts allocated to the Local Agency Facilities disbursed to IEUA under Section V and Exhibit A of the Metropolitan Agreement shall be paid to the identified Local Agency for construction of the Local Agency Facilities.

Section 4. Local Agency Duties-Generally. Chino agrees to perform all of IEUA's duties under the Metropolitan Agreement relating to those Local Agency Facilities intended to be constructed and used by Chino pursuant to such Metropolitan Agreement funding (the "Chino Facilities"), it being the intention of IEUA and Chino that Chino will be directly responsible for all aspects of constructing, operating and maintaining the Chino Facilities in accordance with such duties.

Section 5. Local Agency Duties-Illustrative List. The following duties are illustrative of those agreed to be performed by Chino, but do not limit Chino's responsibilities hereunder.

(a) Construction Duties. Perform all of IEUA's duties with respect to the construction of the Chino Facilities. Such duties include but are not limited to (i) obtaining the Required Approvals applicable to the Facilities pursuant to Section III(C) of the Metropolitan Agreement, (ii) providing for the planning and pre-construction requirements of Section IV(A) of the Metropolitan Agreement which relate to the Chino Facilities, (iii) providing for the construction of the Chino Facilities in accordance with Section IV(B) of the Metropolitan Agreement, and (iv) completing construction of the Chino Facilities in accordance with the timeline set forth in Section IV(B) of the Metropolitan Agreement including retaining and supervising qualified contractors.

(b) Cost Overruns. Pay for all cost overruns allocable to the Chino Facilities pursuant to Section V(B) of the Metropolitan Agreement, and any amounts due to Metropolitan pursuant to Section V(B)(2) of such Agreement. Should bids for construction of the Chino Facilities exceed the Approved Budget required by the Metropolitan Agreement by more than 5 percent, IEUA will review such cost increase with Chino to determine the appropriate way to proceed with the program and Chino thereafter may authorize payment of an additional share of such bid costs, or a change in the scope of the project to reduce such costs to the amount provided in the Approved Budget, or a discontinuation of Chino Facilities construction, in accordance with Section V(B)(2) of the Metropolitan Agreement.

(c) Operation and Maintenance. Perform the following duties imposed on IEUA in the Metropolitan Agreement:

(i) Maintain and operate the Chino Facilities in as good and efficient condition as upon their construction, ordinary and reasonable wear and depreciation excepted, and in compliance with industry standards including any DWR standards and requirements;

(ii) Provide for all repairs, renewals, and replacements necessary for such maintenance and operation; and

(iii) Operate the Chino Facilities, combined with the existing infrastructure of Chino, at Operational Capacity Thresholds necessary to meet performance targets as outlined in Exhibit G of the Metropolitan Agreement upon call by Metropolitan for Stored Water Delivery.

(d) Delivery of Metropolitan Water. Watermaster and IEUA will allocate Metropolitan water supplied by Metropolitan's Storage Account (replenishment, injection or in lieu) through an annual operating plan approved by IEUA and Watermaster. To the extent that Chino is allocated Metropolitan in lieu water in such plan, rates and charges to be paid by Chino for such in lieu deliveries of such water shall be based upon IEUA rates and charges adopted by its Board of Directors for the Metropolitan Dry Year Storage Program from time to time.

(e) Groundwater and Pumping Responsibilities. Chino agrees that Metropolitan has the right to demand that Chino pump stored water from the Chino Basin groundwater in compliance with any applicable rule or regulation of the Chino Basin Watermaster. Chino shall pump such stored water on a pro rata basis determined by IEUA on the basis of all applicable groundwater pumpers that have agreements with IEUA substantially similar to this Agreement upon Metropolitan's request of a Stored Water Delivery in accordance with Section VII(C) of the Metropolitan Agreement, and Exhibit B hereto. Chino shall be reimbursed by Metropolitan for operation and maintenance expenses incurred when pumping stored water upon Metropolitan's demand, in accordance with Section VII(D) of the Metropolitan Agreement.

(f) Record Keeping, Reporting, Inspection and Audit Duties. Chino shall perform all of IEUA's record keeping, reporting, inspection and audit duties which relate to the Local Agency Facilities, in accordance with Section X of the Metropolitan Agreement.

(g) Indemnity. Chino immediately shall reimburse IEUA for any amounts expended for compliance with Section XI of the Metropolitan Agreement which are allocable to the Local Agency Facilities.

(h) Insurance. Chino shall be responsible for providing and paying for all insurance with respect to the Chino Facilities required by Section XII of the Metropolitan Agreement.

Section 6. Representations, Warranties and Covenants. Chino and IEUA represent, warrant, and covenant as follows:

(a) Power and Authority. That Chino is a general law city and IEUA is a Municipal Water District, both duly organized and validly existing under the laws of the State of California; that they have all necessary power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement, and that the execution and delivery hereof by them and the performance of their obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which they are a party or by which they are bound.

(b) Authorization; Valid Obligation. That all proceedings required to be taken by or on behalf of Chino and IEUA to authorize them to make, deliver and carry out the terms of this Agreement have been duly and properly taken, and that this Agreement is their valid and binding obligation enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(c) No Litigation. To the best of the knowledge of Chino and IEUA, there is no litigation, proceeding or investigation pending or threatened, to which they are or would be party, or which relates to the Chino Basin, directly or indirectly, which, individually or in the aggregate, if adversely determined, might materially and adversely affect their ability to perform their obligations under this Agreement, or which raises a question as to the validity of this Agreement, or any action to be taken hereunder.

(d) Compliance with Laws. In the performance of its obligations hereunder, Chino and IEUA and its contractors and subcontractors will comply with all applicable laws, regulations and ordinances, including, without limitation, those listed in Section IX of the Metropolitan Agreement.

(e) No Construction. That construction of the Local Agency Facilities and related work (including planning activities) did not commence prior to the Effective Date.

(f) Capacity. Chino and its contractors, subcontractors and its respective agents will at all times act in an independent capacity and not purport to act as, or represent to others that they are, officers, employees, representatives or agents of Metropolitan, DWR or the State of California.

(g) Oversight and Supervision of Construction. Chino will oversee and supervise all contractors and keep control of all work and provisions of services and materials in connection with the Program.

(h) Maintain Ownership of Program Property. Chino will not sell, abandon, lease, transfer, exchange, mortgage, hypothecate or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Chino Facilities, without the written consent of IEUA.

(i) Protection of Others' Rights. Chino and IEUA will fully protect and preserve the rights of overlying landowners, other groundwater users or water rights holders, parties whose approval is required by any judgment in an adjudicated basin, and all groundwater management agencies or other applicable regulatory agencies, and will take the necessary actions (including groundwater monitoring and mitigation and/or limiting extractions of groundwater) to protect such rights.

Section 7. Miscellaneous.

(a) Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

(b) Partial Invalidity. If any one or more of the covenants or agreements provided in this Agreement should be determined to be invalid or unenforceable, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

(c) Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

(d) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by Federal Express or another reputable commercial overnight courier that guarantees next-day delivery and provides a receipt, or (d) by telefacsimile or telecopy, and such notices shall be addressed as follows:

If to IEUA: Inland Empire Utilities Agency
9400 Cherry Avenue, Bldg. A
Fontana, CA 92335
Attention: Treasurer

With a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Attention: Douglas Brown

If to Chino: City of Chino
Public Works Department
13220 Central Avenue
P.O. Box 667
Chino, CA 91708-0667
Attention: Director of Public Works

With a copy to: Jimmy L. Gutierrez
A Professional Corporation
12616 Central Avenue
Chino, CA 91710


or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed delivered when actually delivered if such delivery is in person, upon deposit with the U.S. Postal Service if such delivery is by certified mail, upon deposit with the overnight courier service if such delivery is by an overnight courier service, and upon transmission if such delivery is by telefacsimile or telecopy.

(f) Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof.


(g) Time of the Essence. Time is of the essence in the performance of this Agreement.

IN WITNESS WHEREOF, IEUA and CHINO have executed this Agreement with the approval of their respective governing body.

INLAND EMPIRE UTILITIES AGENCY

By: 
General Manager

CITY OF CHINO

By: 
City Manager

ATTEST:

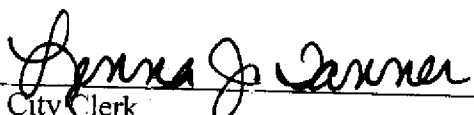
 6/2/13
City Clerk

EXHIBIT A

LOCAL AGENCY FACILITIES

CHINO

AMOUNT OF FUNDING CHINO WILL RECEIVE:

\$1,072,075

FOR THE FOLLOWING FACILITIES:

Joint City of Chino/Monte Vista Water District groundwater production well and associated water treatment facilities located at Palo Verde Boulevard and Benson Avenue, City of Montclair.

CITY OF CHINO
FACILITIES TO BE CONSTRUCTED

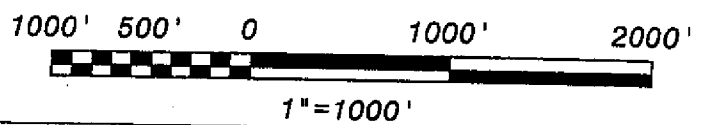
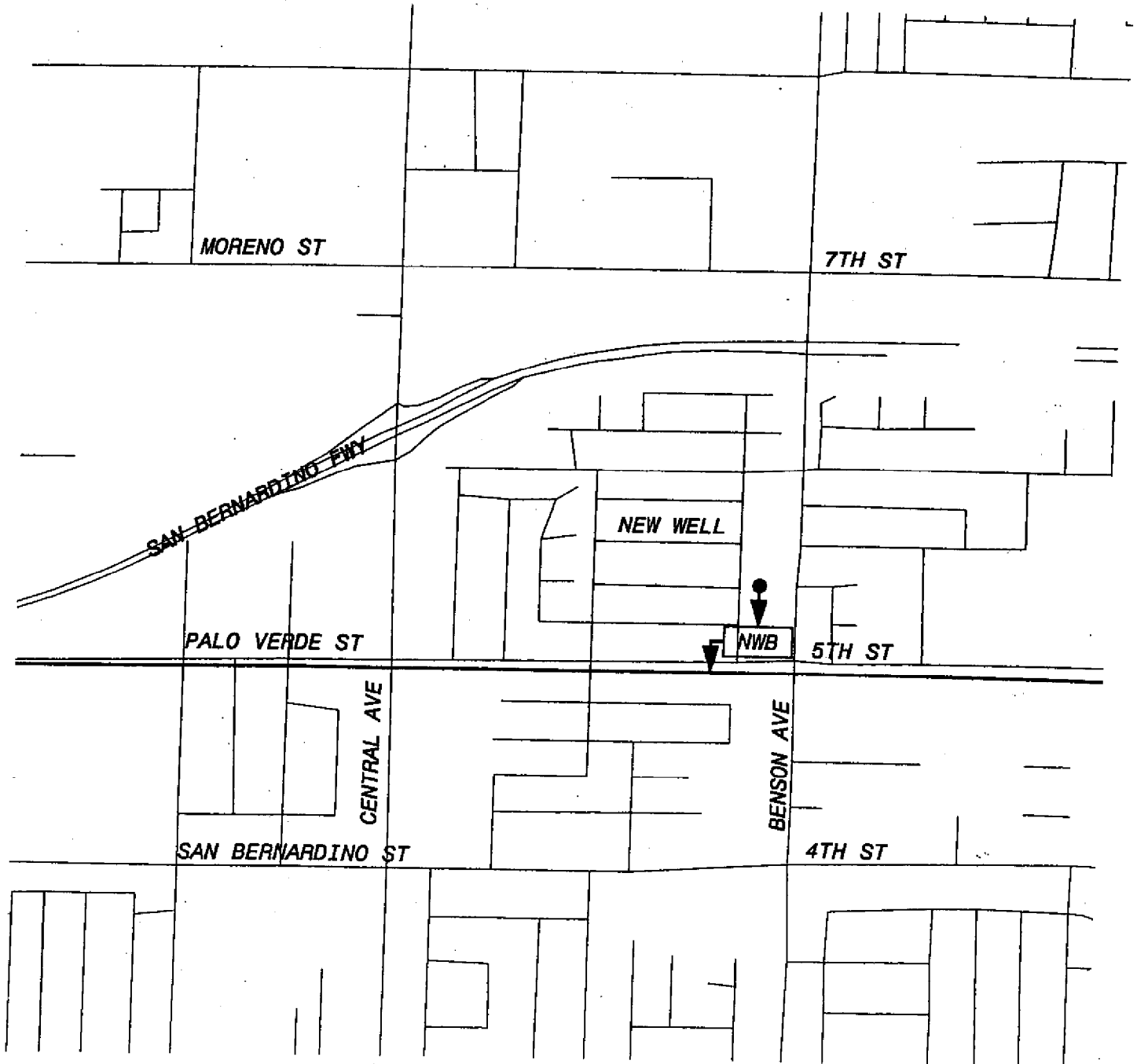


EXHIBIT B

PERFORMANCE TARGETS

CHINO

Dry Year Shift obligation of 1,159 AF over 12-month period

1,159 AF imported water reduction
1,159 AF pumped from MWD storage account
1,159 AF increase in Chino overall local supply production
all three criteria must be met plus or minus 10 percent

Failure to perform would result in Chino being charged a rate equal to two times the MWD Tier 2 rates in effect at such time for each AF of the Dry Year Shift obligation not met.

EXHIBIT C

METROPOLITAN AGREEMENT